IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

WP(C).No. 19981 of 2006(D)

I.A.592/06 IN AS.211/2005 of SUB COURT,KOTTARAKKARA
O.S.535/98 OF MUNSIFF COURT, KOTTARAKKARA

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PETITIONER:

NABEESA BEEVI,
VALLIKAITHAYIL, PALLIKKUNNUMPURATH THOTTUMKARA
VEEDU, CHITHIRA, MANKODU VILLAGE,
KOTTARAKKARA TALUK.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

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1. KULSAM BEEVI,
PANTHADIVILAYIL VEEDU, CHITHIRA,
MANKODU VILLAGE, KOTTARAKKARA TALUK.

2. ABDUL SALAM,
PANTHADIVILAYIL VEEDU, CHITHIRA,
MANKODU VILLAGE, KOTTARAKKARA TALUK.

BY ADV. SRI.DEVAN RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF JUDGMENT OF MUNSIFF'S COURT, KOTTARAKARA IN OS 535/98 DT.15.6.05

EXT.P2: COPY OF WRITTEN STATEMENT FILED IN OS 535/98 DT.15.6.06 OF MUNSIFF COURT, KOTTARAKARA

EXT.P3: COPY OF ORDER OF SUB COURT KOTTARAKARA IN IA 592/06 IN AS 211/05 DT.30/6/06

//True copy//

PS TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.19981 OF 2006

Dated 7th December 2006

JUDGMENT

Petitioner is second defendant in O.S.535/98 on the file Munsiff court, Kottarakara. Under Ext.P1 judgment, defendants were directed to surrender vacant possession of the plaint schedule building with arrears of rent at the rate of Rs.300/- per month from November 1995 onwards. Defendants filed A.S.211/05 before Sub court, Kottarakara challenging the judgment and decree. They filed I.A.592/2006, an application under Order XLI Rule 5(1) of Code of Civil Procedure to stay execution of decree. Under Ext.P3 order learned Sub Judge granted an order of stay but on condition that the appellant shall deposit the arrears of rent before the court within one month from 30/6/2006. This petition is filed under Article 227 of Constitution of India challenging that order contending that learned Munsiff granted the decree for realisation of rent based on the alleged admission of defendants when in fact the very lease

agreement was disputed.

2. Learned counsel appearing for petitioners and respondents were heard.

3. Learned Sub Judge granted an order of stay of execution in Ext.P3, as provided under sub Rule 1 of Rule 5 of order XLI of the Code. Under Sub Rule 3 of Rule 5, no order of stay of execution shall be made under sub Rule 1 unless court making the order is satisfied that substantial loss may result to the party applying for stay of execution unless order is made and application has been made without unreasonable delay and security has been given by applicant for the due performance of the decree as may ultimately be binding upon him. Learned Sub Judge exercised the discretion provided under sub Rule 3 and directed petitioner to deposit the arrears of rent as found by the trial court. Extra ordinary jurisdiction of this court under Article 227 of Constitution of India cannot be invoked to interfere with that order. Petitioner is granted 45 days' time from this day to deposit the amount as directed in Ext.P3 order.

Writ petition is disposed of accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.